

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

WILLIE C. RANDLE)	
Claimant)	
VS.)	
)	
NATIONAL ENVELOPE CORP.)	Docket No. 170,135
Respondent)	
AND)	
)	
LIBERTY MUTUAL INSURANCE CO.)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Respondent appeals from a preliminary hearing Order of Administrative Law Judge Alvin E. Witwer dated May 21, 1996, wherein the Administrative Law Judge granted claimant benefits including authorized treatment with Dr. John B. Moore, IV, and granted temporary total disability compensation if claimant is taken off work by Dr. Moore.

ISSUES

Respondent alleged the Administrative Law Judge exceeded his jurisdiction in granting the benefits awarded.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

K.S.A. 44-551 grants the Appeals Board jurisdiction to review all acts, findings, awards, decisions, rulings or modifications of findings of awards made by an administrative law judge. K.S.A. 44-551 goes on to say that appeals of preliminary hearing orders under K.S.A. 44-534a shall not be conducted unless it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at preliminary hearing. K.S.A. 44-534a(a)(2) lists appealable disputed issues including whether the claimant suffered an accidental injury, whether the accidental injury arose out of and in the course of the employee's employment, whether notice was given or claim timely made, or whether certain defenses apply. These issues are jurisdictional and subject to review by the Appeals Board.

K.S.A. 44-534a goes on to grant the administrative law judge the authority to decide issues dealing with the furnishing of medical treatment and the payment of temporary total disability compensation.

The vague issue listed by the respondent is more clearly discussed in the respondent's brief to the Appeals Board. The respondent argues the following as the basis for its appeal:

- (1) That the Administrative Law Judge exceeded his jurisdiction in ordering medical treatment because claimant failed to provide evidence showing a current need for medical treatment for the right upper extremity.
- (2) The Administrative Law Judge exceeded his jurisdiction in ordering medical treatment because claimant has had no medical treatment nor seen a doctor since March 1994, a period of over two years.
- (3) The Administrative Law Judge exceeded his jurisdiction in ordering medical treatment for claimant's right upper extremity because claimant has not missed any work for the right upper extremity and the bright line rule of Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994), should apply and a date of accident to claimant's right upper extremity has yet to accrue.
- (4) The Administrative Law Judge exceeded his jurisdiction in ordering medical treatment to the left upper extremity because after having surgery to his left upper extremity in 1992 claimant returned to work with respondent and missed no work since 1992. Thus, claimant's

current problem stems not from the original date of accident but from some new date of accident, and per Berry as above discussed, no new date of accident or new claim has accrued to claimant's left upper extremity.

Claimant, in his testimony, clearly indicated ongoing problems associated with both right and left upper extremities. These problems began as early as 1991 and according to claimant's testimony have continued with temporary periods of improvement following early medical care. The Wartenburg's syndrome alleged by claimant's attorney in their letter of August 8, 1995, was clearly identified in Dr. Moore's medical of March 1994. It is also noted in Dr. Moore's medical of 1991 he discussed bilateral symptomatology with claimant with the left being worse than the right.

The medical evidence and testimony provided by claimant indicates claimant has indeed suffered an ongoing series of traumas to both his right and left upper extremities. As K.S.A. 44-534a grants the administrative law judge the authority to order both medical and temporary total disability compensation, respondent's allegations in paragraphs (1) and (2) fail for lack of jurisdiction on appeal. The arguments raised by respondent in paragraphs (3) and (4) cite Berry as being support for the argument that as long as a claimant continues to be employed no date of accident will ever accrue, claimants would thus never be entitled to benefits until such time as they are forced to quit their job and seek medical treatment for on-the-job injuries. This argument has been presented to and rejected by the Appeals Board in the past and, in all likelihood, will continue to be rejected by the Appeals Board in the future. This argument would, in effect, allow a claimant to suffer irreparable damage from a micro-trauma injury without ever suffering an accident or becoming entitled to benefits. It is ludicrous on its face and is rejected by the Appeals Board.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the respondent's appeal as to the issues in paragraphs (1) and (2) is dismissed and the preliminary hearing Order of Administrative Law Judge Alvin E. Witwer dated May 21, 1996, regarding paragraphs (3) and (4) remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of July 1996.

BOARD MEMBER

c: Gregory D. Bangs, Overland Park, KS
Stephanie Warmund, Overland Park, KS
James K. Blickhan, Overland Park, KS
Nathan Sutton, Prairie Village, KS
Alvin E. Witwer, Administrative Law Judge
Philip S. Harness, Director